Andy K's DAIRY & DELI

June 3, 1998

Mr. Geoffrey C.S. March, Chief Public Utility Tax
State of New Jersey
Department of the Treasury
Division of Taxation
50 Barrack Street
Trenton, New Jersey 08646-0269

Re: The Unfair Cigarette Sales Act

Dear Mr. March,

I want to thank you and your colleagues for taking the time to meet with us last Thursday in an attempt to clarify the Division of Taxation's position with respect to several practices that are on going today in the sales and advertising of cigarettes.

The purpose of this letter is to seek confirmation that the following specific transactions would not be deemed a violation of the Act.

Background

Currently Andy K's charges the following prices for premium cigarettes:

One pack - $2.74 plus sales tax for a total of $2.90
Two packs- $5.09 plus sales tax for a total of $5.40
Carton - $25.07 plus sales tax for a total of $26.57

Scenario

A customer comes into Andy K's and purchases a carton of cigarettes. The customer is charged $26.57 (including the sales tax). The customer proceeds to hand our clerk a Manufacturer's Coupon which reads $2.00 off any carton of the brand of cigarettes that the customer is purchasing. The clerk accepts the coupon and rings in into our register. The balance now shown is $24.57 which the customer hands our clerk in cash.

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The next customer comes in to our store and purchases a pack of cigarettes which has a Manufacturer's Coupon attached to it reading $.40 off. The customer is charged $2.90 (including the sales tax), given credit for the coupon which is removed from the pack of cigarettes and hands the clerk $2.50 in cash.

Rational

I do not believe that either of the above scenarios violate the provisions of N.J.S.A. 56:7-20. The amount of the cigarette purchase ($25.07 in the first scenario and $2.74 in the second scenario) is recorded as sales and represents the true price at which we sold our product. . The requisite sales tax amount ($1.50 in the first scenario and $.16 in the second scenario) is recorded as sales tax receipts. The amount of the coupon is recorded as coupon receipt and the amount of cash as cash receipt. The coupon was not considered in determining the sales price of the cigarettes. The coupon was simply accepted as part of the total amount due from the consumer.

The treatment of these Manufacturer's Coupons are no different than the Coupons issued by Campbell Soup or Proctor and Gamble, which our store accepts provided the product indicated on the coupon is purchased.

I believe that my interpretation of the law is reasonable, appropriate and consistent with the spirit of the law. Any other interpretation would cause confusion not only for retailers, but for consumers wanting to use cigarette coupons. Further, it would create an every greater competitive disadvantage for New Jersey retailers and further drive retail business to surrounding states.

If any additional information is needed for you to review this scenario, please do not hesitate to contact me. Thank you in advance for you consideration. On a daily basis I have customers who redeem cigarette coupons in my stores. Therefore, I hope that you would appreciate that I have some sense of urgency for as prompt a response as practical. I look forward to hearing from you.

Respectfully,

Andrew Kerstein
President

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